



Information Technology Industry Council
Leading Policy for the Innovation Economy

August 22, 2011

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Ex parte report regarding meeting on CG No. 10-213, WT No. 96-198, CG No. 10-145

Dear Ms. Dortch:

On August 18, 2011, the Information Technology Industry Council (“ITI”) met with Federal Communications Commission staff (hereafter, “the Commission”) via teleconference to discuss a variety of issues relative to the Notice of Proposed Rulemaking implementing the Twenty-First Century Communications and Video Accessibility Act of 2010 (hereafter, “the Accessibility Act”).

The ITI delegation consisted of Mr. Tom Wlodkowski of AOL, Inc.; Ms. Lisa Lindgren of Adobe Systems, Inc.; Ms. Laura Ruby and Mr. Alex Li of the Microsoft Corporation; Mr. Michael George of the Ricoh Americas Corporation; and me.

Representing the Commission were Ms. Elizabeth Lyle, Mr. Brian Regan, Mr. Jeffrey Tignor and Mr. Vijay Pattisapu of the Wireless Telecommunications Bureau; Ms. Rosaline Crawford, Mr. Eliot Greenwald and Mr. John Herzog of the Consumer and Governmental Affairs Bureau; Mr. Jamal Mazrui of the Wireline Competition Bureau; and Mr. Walter Johnston of the Office of Engineering and Technology.

Consistent with comments that ITI filed on August 9, 2011, the parties discussed our

recommendation that the Commission offer “safe harbor” protections under Section 716 of the Accessibility Act to developers and providers of Advanced Communications Services (“ACS”) that programmatically expose their ACS user interfaces using one or more established Application Program Interfaces (“API”) that support the applicable provisions in ISO/IEC 13066-1:2011.¹ We also recommended that, as technology advances, it should be the responsibility of the appropriate manufacturer to inform the Commission when new, relevant APIs and specifications are made available to the market that meet the referenced standard. The same protections should be afforded for implementation of other relevant standards and technical specifications for which the Commission may extend safe harbor status.

Teleconference participants discussed how to incentivize assistive technology (“AT”) developers to effectively implement APIs, with industry participants providing examples of how information technology (“IT”) and AT manufacturers are collaborating to help advance AT/IT interoperability. Participants also discussed what provisions the Commission may need to put in place to verify that manufacturers and developers have effectively implemented standards and APIs and thereby qualify for safe harbor coverage.

Another question revolved around whether safe harbors may become “stale” or outdated, and whether it might be appropriate for the Commission to withdraw safe harbor status in such cases. How would the Commission determine if such a step was necessary? ITI members recommended that the agency first approach the developers or standards development organizations to discuss any such concerns. After further discussion, Commission staff indicated that the matter of safe harbors may require further dialog beyond the current rulemaking. In the meantime, they were seeking more specific input why Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794(d)), the W3C/WAI Accessible Rich Internet Applications

¹ As new APIs and specifications are developed and enter the marketplace, manufacturers have the option of bringing them to ISO and IEC for consideration as new parts of ISO/IEC 13066-1:2011, or to other Standards Development Organizations with accessibility-relevant standards. ITI recommends that the Commission adopt similar flexibility and provide “safe harbor” status to any additions to the referenced standard and to other relevant standards.

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standard² and manufacturer APIs would be useful as safe harbors. The ITI delegation agreed to consider providing additional input on this topic.

Participants also discussed the breadth of product coverage Congress intended in passing the Accessibility Act, with Commission staff expressing the view that the law requires the agency to address hardware and other components used to access and utilize ACS. They are seeking input from industry regarding what products should be covered. ITI delegates said that industry viewed the primary focus of the law to be on services rather than such components as operating systems and hardware devices, and reiterated concerns that a broader interpretation could create risks for manufacturers and developers when products are bundled for sale to consumers.

This concludes ITI's report on the August 18 *ex parte* meeting between the aforementioned Commission staff and the ITI delegation. We welcome any inquiries regarding the views expressed herein. Please direct any questions to the undersigned.

Respectfully,

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² The standard is commonly referred to by its acronym, ARIA. See <http://www.w3.org/TR/wai-aria/>.